

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMES KNIGHT

Plaintiff,

vs.

FULTON, FRIEDMAN & GULLACE, LLP
AND ASSET ACCEPTANCE, LLC

Defendants.

CV 12 - 1656

Case No. _____

COMPLAINT

Jury Trial Demanded

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

SPATT, J.

★ **APR 2 - 2012** ★

NATURE OF ACTION **BROOKLYN OFFICE**

1. This is an action brought under the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district, where Plaintiff resides in this district, and/or where Defendants transact business in this district.

PARTIES

4. Plaintiff, James Knight ("Plaintiff"), is a natural person who at all relevant times resided in the State of New York, County of Nassau, and City of Hicksville.

5. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

6. Defendant, Fulton, Friedman & Gullace, LLP (“FFG”) is an entity which all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

7. FFG is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

8. Defendant, Asset Acceptance, LLC, and (“Asset”) is an entity who acquires debt in default merely for collection purposes, and who at all relevant times was engaged in the business of attempting to collect a debt from Plaintiff.

9. Asset is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

10. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than FFG.

11. Plaintiff’s obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than FFG, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes.

12. Plaintiff incurred the obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than FFG.

13. FFG uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

14. Asset purchases debts once owed or once due, or asserted to be once owed or once due a creditor.

15. Asset acquired Plaintiff's debt once owed or once due, or asserted to be once owed or once due a creditor, when the debt was in default.

16. Asset is thoroughly enmeshed in the debt collection business, and is a significant participant in FFG's debt collection process.

17. In connection with collection of an alleged debt in default, Defendant Asset sent Plaintiff written initial communication, claiming a past due balance of \$9,656.39. *See* correspondence, attached hereto as Exhibit A.

18. Thereafter, on April 1, 2011 Defendant Asset sent Plaintiff a collection letter alleging that Plaintiff had a past due balance of \$11,520.96. *See*, correspondence, attached hereto as Exhibit B.

19. Upon information and good faith belief, Defendant Asset was charging Plaintiff an annual interest rate of around 18.8%, which would support the increase purported by the documents mentioned above.

20. On May 24, 2011, Defendant FFG, itself and on behalf of Asset, sent Plaintiff written communication in an attempt to collect the alleged defaulted debt, claiming that Plaintiff had a past due balance of \$9,259.92. *See* correspondence, attached hereto as Exhibit C.

21. Plaintiff did not make a payment on the account between April 1, 2011 and May 24, 2011.

22. Additionally, on October 27, 2011, Defendant FFG, itself and on behalf of Asset, sent Plaintiff written communication claiming that the past due balance was \$9,556.32. *See* correspondence, attached hereto as Exhibit D.

23. Upon information and good faith belief, Defendant FFG was charging Plaintiff an annual interest rate of around 7.49%, which would support the increase in amount due in its two collection letters outlined above.

24. In November 2011, Asset caused to be reported on Plaintiff's Equifax and Experian credit reports, a past due balance of \$12,691.

25. For the foregoing reasons, Defendant FFG, itself and on behalf of Asset, falsely represented the amount of Plaintiff's debt.

26. Defendants' actions constitute conduct highly offensive to a reasonable person.

**COUNT I
VIOLATION OF 15 U.S.C. § 1692e(2)(A)
DEFENDANT FFG**

27. Plaintiff repeats and re-alleges each and every allegation above.

28. Defendant FFG, itself and on behalf of Defendant Asset, violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character, amount, or legal status of Plaintiff's debt in its May 24, 2011 collection letter, and subsequently in its October 27, 2011 collection letter.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that FFG violated 15 U.S.C. § 1692e(2)(A);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692e(2)(A)
DEFENDANT ASSET

29. Plaintiff repeats and re-alleges each and every allegation above.

30. Defendant Asset, by and through FFG, violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character, amount, or legal status of Plaintiff's debt in FFG's May 24, 2011 collection letter, and subsequently in its October 27, 2011 collection letter.

31. Asset, by virtue of its status as a "debt collector" under the FDCPA, is liable for actions of FFG, the debt collector it hired to collect an alleged debt from Plaintiff on its behalf.

32. Alternatively, Asset violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character, amount, or legal status of Plaintiff's debt in its April 1, 2011 collection letter to Plaintiff.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Asset violated 15 U.S.C. § 1692e(2)(A);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

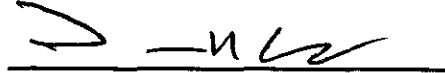
TRIAL BY JURY

33. Plaintiff is entitled to and hereby demands a trial by jury.

This 27th day of March, 2012.

ATTORNEYS FOR PLAINTIFF
James Knight

Respectfully submitted,



Dennis R. Kurz
NY Bar No. 4570453
Weisberg & Meyers, LLC
Attorneys for Plaintiff
300 International Drive, Suite 100
Williamsville
Buffalo, NY 14221
(888) 595-9111 ext. 412
(866) 842-3303 (fax)
dkurz@attorneysforconsumers.com

Weisberg & Meyers, LLC
80 Broad Street, 5th Floor
New York, NY 10004

Please send correspondence to the address below

Dennis R. Kurz
NY Bar No. 4570453
Weisberg & Meyers, LLC
Attorneys for Plaintiff
5025 N. Central Ave. #602
Phoenix, AZ 85012

Exhibit “A”

Asset Acceptance, LLC

New York City License No. 1255250

Toll Free 877-768-8844 Ext.

PO Box 2036

Warren, MI 48090-2036

5

First Notice

March 22, 2010

RE: CITIBANK

Original Acct #: 5424180578539964 -

Asset Acceptance, LLC Acct #: 41300263

Balance Past Due: \$666.39

Dear JAMES C KNIGHT JR:

It is our pleasure to welcome you as a new customer of Asset Acceptance LLC. Your account with the above mentioned creditor has been purchased and is now owned by Asset Acceptance LLC. In order to insure proper credit for any payments it is necessary that all future payments and inquiries be made to:

ASSET ACCEPTANCE LLC

PO Box 2036

Warren, MI 48090-2036

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Sincerely,

CHERI MORGAN - Phone: Toll Free 877-768-8844 Ext.

Debt Collector

Asset Acceptance, LLC

Fax 586 446-9825 - 3/25/2010

We may report information about your account to credit bureaus.

See Reverse Side for Important Information Regarding Your Privacy Rights



PO Box 2036
Warren MI 48090-2036

ADDRESS SERVICE REQUESTED

Asset Acceptance, LLC Acct #: 41300263
Balance Past Due: \$666.39

\$ 6.34377

March 22, 2010

41300263-8100 309538320



JAMES C KNIGHT JR

45 Hope Ln

Hicksville NY 11801-6110

ASSET ACCEPTANCE, LLC

PO Box 2036

Warren MI 48090-2036



Exhibit “B”

Asset Acceptance, LLC

New York City License No. 1255250

April 1, 2011

Toll Free (877) 850-0087 Ext. 0

P.O. Box 2036
Warren, MI 48090-2036

USE YOUR TAX REFUND TO SETTLE THIS ACCOUNT!

Dear James C Knight Jr.

Are you receiving a tax refund this year? Wondering what might be a good use for this extra cash? We have the answer. Use it to settle this account. We have just the offer to help you get there - 35% off your current balance of \$11520.96 if you settle this debt by April 30, 2011.

TO TAKE ADVANTAGE OF THIS OFFER YOU NEED ONLY TAKE ONE OF THE FOLLOWING ACTIONS:

- Call Darren James toll-free at (877) 850-0087 ext. 0 today to discuss the offer details and set-up your payment arrangement.
- Go online to www.paymybill.com using your debit card, credit card, or checking account. Your user ID is: 0271627. Your password is: 41300263.
- Mail a check or money order made payable to Asset Acceptance, LLC using the enclosed return envelope.

BY ACCEPTING THIS OFFER YOU CAN TAKE ADVANTAGE OF THESE BENEFITS

- A zero balance on your CITIBANK account with us.
- A paid account letter upon request.
- We will report your account as paid to the credit bureaus.

It may be possible to extend the deadline under certain circumstances. The settlement offer outlined above is guaranteed through the referenced expiration date. After that time we reserve the right to modify the settlement offer, or revoke the offer entirely. We are not obligated to renew this offer.

This offer is void if a previous settlement has been arranged.

Please note that the Current Balance was calculated on 03/20/2011 and may vary due to payments and/or accrual of interest after that date.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Sincerely,

Darren James, Debt Collector
(877) 850-0087 Ext. 0
Asset Acceptance, LLC

Detach Lower Portion and Return with Payment

Asset Acceptance, LLC Account # 41300263
Current Balance: \$11520.96
Settlement Balance: \$7488.62



James C Knight Jr
45 Hope Ln.
Hicksville, NY 11801-8110

Exhibit “C”

FULTON FRIEDMAN & GULLACE, LLP

COLLECTIONS, CONSULTING & LITIGATION

LICENSED IN ARIZONA, CALIFORNIA, DISTRICT OF COLUMBIA, MARYLAND, NEW YORK, PENNSYLVANIA, TENNESSEE & TEXAS

NYC DEPARTMENT OF CONSUMER
AFFAIRS LICENSES:
1328139, 1344745 & 1344741

NEW YORK
28 E. MAIN STREET, SUITE 500
ROCHESTER, NEW YORK 14614
800-869-2331

DIRECT ALL INQUIRES TO TOM MCCARTHY
6

May 24, 2011

JAMES C KNIGHT JR
45 HOPE LN
HICKSVILLE NY 11801

Re: CREDITOR: ASSET ACCEPTANCE LLC (assignee of CITIBANK)
TOTAL DUE: \$9259.92 FILE NO: 306222

Your unpaid account referred to above has been referred to our office for collection. Disregard of this notice may result in the commencement of legal proceedings against you for collection of this debt. Note that if a lawsuit is commenced, the Court may assess additional charges for the court costs and other expenses of the lawsuit.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this claim or any portion thereof, this office will assume this debt to be valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Very truly yours,

Fulton, Friedman & Gullace, LLP



FFG#: 306222

THIS IS AN ATTEMPT TO COLLECT A DEBT BY A DEBT COLLECTOR.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Exhibit “D”

240 755-4028

Fulton Friedman

FULTON FRIEDMAN & GULLACE, LLP

COLLECTIONS, CONSULTING & LITIGATION

LICENSED IN ARIZONA, CALIFORNIA, DISTRICT OF COLUMBIA, MARYLAND, NEW YORK, PENNSYLVANIA, TENNESSEE & TEXAS

NEW YORK

NYC DEPARTMENT OF CONSUMER
AFFAIRS LICENSES:
1326139, 1344745 & 1344741

28 E. MAIN STREET, SUITE 500
ROCHESTER, NEW YORK 14614
800-869-2331

DIRECT ALL INQUIRES TO TOM MCCARTHY

October 27, 2011

JAMES C KNIGHT JR
45 HOPE LN
HICKSVILLE NY 11801

Re: CREDITOR: ASSET ACCEPTANCE LLC assignee of CITIBANK
TOTAL DUE: \$9556.32 FFG FILE NO: 306222

Please accept this correspondence as confirmation of the payment arrangements made with Trina Davis on October 27, 2011. You agreed to pay \$200.00 on or before October 31, 2011 and \$200.00 on the same date of each and every month thereafter until the entire sum together with interest is paid in full.

Please note that, as explained on the phone, our office will continue to pursue judgment for our client. However, we will hold enforcement efforts on any judgment entered pursuant to your payment arrangements with our office.

If payment is not received as indicated above, then the deal is null and void and the full balance owing on the account, less credits for payments made, will be due.

Please make funds payable to Fulton Friedman & Gullace LLP, as attorneys and send to the New York address listed above. Kindly include your File Number on your payment.

If you are unable to make payments as stated herein, please contact our office for updated payment arrangements. Should you have any questions, please do not hesitate to contact our office at the toll free number listed above. Thank you and kindest regards.

Very truly yours,
Trina Davis
Fulton, Friedman & Gullace, LLP

No I do not
did not to
About this
you were
having an
Appointment

11/01/2011 11:00 AM FAXED 11/01/2011 11:00 AM

THIS IS AN ATTEMPT TO COLLECT A DEBT BY A DEBT COLLECTOR.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.